

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT

RHODE ISLAND TRAFFIC TRIBUNAL

STATE OF RHODE ISLAND

:

v.

:

C.A. No. M19-0014

:

19402501371

:

ROSEMARIE APONTE-MARTINEZ

:

DECISION

PER CURIAM: Before this Panel on October 23, 2019—Magistrate Noonan (Chair), Magistrate DiChiro, and Associate Judge Parker, sitting—is Rosemarie Aponte Martinez’s (Appellant) appeal from a decision of Chief Judge Matthew B. Smith (Trial Judge) of the Cranston Municipal Court, sustaining the charged violations of G.L. 1956 § 31-15-5, “Overtaking on the right.” Appellant appeared before this Panel represented by counsel. Jurisdiction is pursuant to § 31-41.1-8.

I

Facts and Travel

On February 15, 2019, Officer Patrick O’Malley (Officer O’Malley) of the Cranston Police Department responded to the scene of a reported motor vehicle accident involving a Cranston Police cruiser and another vehicle at the intersection of Cranston Street and Cutting Avenue. Tr. at 37:8-10, July 18, 2019. Upon arriving at the scene, Officer O’Malley began conducting an investigation. *Id.* at 37:14-16. Based upon this investigation, Officer O’Malley issued Appellant, the operator of the other vehicle involved in the collision, a citation for the above-referenced violation. *Id.* at 37:17-38:6; *see* Summons No. 19402501371.

Appellant contested the charged violation, and the matter proceeded to trial on July 18,

2019. At trial, several members of the Cranston Police Department testified. First, Officer Bretton Robbins (Officer Robbins) testified. *Id.* at 12:3. Officer Robbins testified that while operating his police cruiser, he exited a Cumberland Farms parking lot in an attempt to cross over Cranston Street onto Cutting Avenue. *Id.* at 13:9-14. Officer Robbins testified that heavy traffic required motorists traveling in both directions to stop in order for him to slowly enter Cranston Street. *Id.* at 16:1-5. However, Officers Robbins testified that motorists on Cranston Street did possess the right of way. *Id.* at 23:6-9. Nonetheless, traffic stopped to let Officer Robbins proceed across the southbound lane, into the first northbound lane, and finally partially into the second northbound lane of Cranston Street. *Id.* at 13:12-15. However, due to the congestion, Officer Robbins had to remain partially within the second northbound lane of Cranston Street and was unable to proceed onto Cutting Avenue. *Id.* at 13:19-24. Officer Robbins testified that he then observed Appellant's vehicle pass several stopped vehicles on the right and ultimately collide with the right passenger side of his police cruiser. *Id.* at 21:23-22:4.

Inspector David Boucher (Inspector Boucher), a certified accident reconstructionist and member of the Cranston Police Department also testified. *Id.* at 44:11. Inspector Boucher testified that after conducting an investigation of the accident scene, he concluded that the evidence indicated Appellant traveled in the breakdown lane and overtook vehicles on the right before coming into contact with Officer Robbins' police cruiser. *Id.* at 48:22-23. Inspector Boucher stated that "the only way [the accident] could've happened" was if Appellant left traffic, crossed into the breakdown lane, and attempted to continue proceeding on Cranston Street. *Id.* at 50:15-22.

Additionally, Mario Moretti (Mr. Moretti), a tow truck driver, testified. *Id.* 25:10. Mr. Moretti testified that at the time of the incident, he was in his tow truck on Cutting Avenue

waiting for traffic to clear on Cranston Street. *Id.* at 27:4-13. Mr. Moretti testified that he observed Officer Robbins exit the Cumberland Farms parking lot and proceed across Cranston Street after traffic had yielded to him. *Id.* at 25:17-22. Mr. Moretti testified that as Officer Robbins was attempting to enter the second northbound lane of Cranston Street, a vehicle proceeded in the breakdown lane and collided with Officer Robbins' police cruiser. *Id.* at 25:22-24. Mr. Moretti further testified that a vehicle had stopped to allow Officer Robbins to proceed into the second northbound lane of Cranston Street, and that there were at least three more stopped automobiles behind that initial vehicle. *Id.* at 27:21-28:9. Mr. Moretti testified that he observed Appellant's vehicle exit traffic, proceed around the four vehicles that had yielded to Officer Robbins, and collide with his police cruiser. *Id.* at 28:23-29:2. However, Mr. Moretti stated that he did not observe Appellant's vehicle to be stopped in traffic before this occurred. *Id.* at 28:20-22.

Having heard all of the testimony, the Trial Judge sustained the charged violation based on the evidence presented at trial. *Id.* at 52:20-22. The Trial Judge found by clear and convincing evidence that Officer Robbins had come to a complete stop, fully occupied the second northbound lane of Cranston Street, and that Appellant failed to yield to Officer Robbins' police cruiser by exiting traffic and overtaking on the right. *Id.* 53:24-54:9. The Trial Judge further found that no conditions existed to allow Appellant to overtake and pass on the right. *Id.* at 54:24-55:2. Accordingly, the Trial Judge imposed a fine of eighty-five dollars and court costs of thirty-five dollars. *Id.* at 55:22.

The Appellant subsequently filed a timely appeal of the Trial Judge's decision. *See* Appellant's Notice of Appeal. Forthwith is the Panel's decision.

II

Standard of Review

Pursuant to § 31-41.1-8, the Appeals Panel of the Rhode Island Traffic Tribunal possesses appellate jurisdiction to review an order of a judge or magistrate of the Rhode Island Traffic Tribunal. Section 31-41.1-8(f) provides, in relevant part:

“The appeals panel shall not substitute its judgment for that of the judge or magistrate as to the weight of the evidence on questions of fact. The appeals panel may affirm the decision of the judge or magistrate, or it may remand the case for further proceedings or reverse or modify the decision if the substantial rights of the appellant have been prejudiced because the judge’s findings, inferences, conclusions or decisions are:

- “(1) In violation of constitutional or statutory provisions;
- “(2) In excess of the statutory authority of the judge or magistrate;
- “(3) Made upon unlawful procedure;
- “(4) Affected by other error of law;
- “(5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- “(6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.”

In reviewing a hearing judge or magistrate’s decision pursuant to § 31-41.1-8, this Panel “lacks the authority to assess witness credibility or to substitute its judgment for that of the hearing judge [or magistrate] concerning the weight of the evidence on questions of fact.” *Link v. State*, 633 A.2d 1345, 1348 (R.I. 1993) (citing *Liberty Mutual Insurance Company v. Janes*, 586 A.2d 536, 537 (R.I. 1991)). “The review of the Appeals Panel is confined to a reading of the record to determine whether the judge’s [or magistrate’s] decision is supported by legally competent evidence or is affected by an error of law.” *Id.* (citing *Environmental Science Corporation v. Durfee*, 621 A.2d 200, 208 (R.I. 1993)). “In circumstances in which the Appeals Panel determines that the decision is clearly erroneous in view of the reliable, probative, and

substantial evidence on the whole record or is affected by error of law, it may remand, reverse, or modify the decision.” *Id.* Otherwise, it must affirm the hearing judge’s (or magistrate’s) conclusions on appeal. *See Janes*, 586 A.2d at 537.

III

Analysis

On appeal, Appellant sets forth a two-part argument that the Trial Judge’s decision to sustain the charged violation was “[c]learly erroneous in view of the reliable, probative, and substantial evidence on the whole record.” Sec. 31-41.1-8(f)(5). Each argument will be discussed in turn.

A. Applicability of § 31-17-5

First, Appellant argues that in exiting the parking lot, Officer Robbins did not conform to § 31-17-5 of the Rhode Island General Laws by failing to yield to oncoming motorists operating on Cranston Street. Section 31-17-5 states, in relevant part: “The driver of a vehicle about to enter or cross a highway from a private road or driveway shall yield the right-of-way to all vehicles approaching on the highway and to all pedestrians attempting to cross the private road driveway or highway.” Sec. 31-17-5.

In the instant matter, the record does not indicate that Officer Robbins yielded the right-of-way to vehicles traveling on Cranston Street in the manner contemplated by § 31-17-5. On the contrary, Officer Robbins’ testimony indicates that he did not wait in the Cumberland Farms parking lot for traffic to clear, but instead entered Cranston Street, causing traffic across several lanes to have to yield to his police cruiser. Although motorists did in fact stop to permit Officer Robbins to proceed further into the different lanes of Cranston Street, this did not shift who possessed the right-of-way under § 31-17-5; motorists traveling on Cranston Street—to include

Appellant—continued to possess the right-of-way notwithstanding Officer Robbins’ entry into the road, and, under § 31-17-5, Officer Robbins was required to continue to yield the right-of-way to them. Because the record indicates that Officer Robbins failed to do so at the time of the motor vehicle collision with Appellant, it is evident that Appellant continued to possess the right-of-way and therefore the right to continue traveling freely along Cranston Street.

B. Applicability of § 31-15-5

Second, Appellant argues that her conduct prior to the collision was permitted under § 31-15-5, which contains several exceptions under which a motorist is permitted to pass a vehicle on the right. One exception, found under § 31-15-5(b), permits a motorist to pass a vehicle on the right “under conditions permitting the movement in safety.” Sec. 31-15-5(b). Appellant argues that this exception applies in the instant matter because, despite the heavy traffic, she was operating her vehicle freely within the permitted lane of travel on Cranston Street at the time of the collision, and because Officer Robbins’ police cruiser was not completely stopped, but was still moving into the second northbound lane as her own vehicle collided with it. Appellant also contends that the exception under § 31-15-5(b) applies because she did not traverse off the “main-traveled portion of the roadway.” Sec. 31-15-5(b). Appellant discusses that Cranston Street’s lanes do not become clearly defined until well after the point where Appellant’s vehicle and Officer Robbins’ police cruiser collided, and that therefore the evidence does not indicate that she impermissibly traveled in the breakdown lane.

In the instant matter, the record does not indicate sufficient evidence that Appellant exited the lane of travel in an attempt to proceed around Officer Robbins’ stopped police cruiser. On the contrary, Officer Robbins’ testimony indicates that his police cruiser was situated only partially in the second northbound lane of Cranston Street at the time of the collision. This

suggests that Appellant was proceeding safely in a permitted lane of travel on Cranston Street at the time of the motor vehicle collision, and came into contact with the moving police cruiser; the evidence does not indicate that Appellant traversed around a police cruiser which had come to a full stop and fully occupied the second northbound lane of Cranston Street.

After thoroughly reviewing the record, this Panel finds that there was insufficient evidence offered at trial to support the Trial Judge's decision. *See Link*, 633 A.2d at 1348 (citing *Envtl. Sci. Corp.*, 621 A.2d at 208). Accordingly, this Panel finds the Trial Judge's decision to be "clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record[.]" Sec. 31-41.1-8(f)(5).

IV

Conclusion

This Panel has reviewed the entire record before it. Having done so, the members of this Panel are satisfied that the Trial Judge's decision was clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record. *See* § 31-41.1-8(f)(5). The substantial rights of the Appellant have been prejudiced. Accordingly, Appellant's appeal is granted, and the charged violation is dismissed.

ENTERED:

Magistrate William T. Noonan (Chair)

Magistrate Michael DiChiro

Associate Judge Edward C. Parker

DATE: _____